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Americans Behind Bars: One Year Later

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AMERICANS BEHIND BARS: ONE YEAR LATER

In 1991, The Sentencing Project issued a report, "Americans Behind Bars: A Comparison of International Rates of Incarceration," which documented that the United States had become the world leader in its rate of incarceration. During the decade of the 1980s, the doubling of the number of inmates in the U.S. had caused its rate of incarceration to surpass that of South Africa and the Soviet Union, the previous leaders. "Americans Behind Bars" also documented the dramatically high rates of incarceration of African-American males, finding that black males in the U.S. were imprisoned at a rate four times that of black males in South Africa.

Now, one year later, we look again at comparative rates of incarceration with a particular focus on the leading nations, the United States and South Africa. We also examine rates of incarceration for Europe and selected other nations for which we were able to obtain data. Due to the breakup of the Soviet Union and the difficulty of obtaining accurate data, we have excluded its prison population from this analysis.

The key findings of this report, as seen in Tables 1-4, are as follows:

- The gap in incarceration rates between the United States and South Africa widened between 1989 and 1990.[1] The U.S. rate of incarceration increased by 6.8 percent to 455 per 100,000, while the South African rate declined by 6.6 percent, and is now 311 per 100,000.[2]

- Black males in the U.S. are now incarcerated at a rate almost five times that of black males in South Africa. The U.S. rate for black males is now 3,370 per 100,000, compared to 681 per 100,000 in South Africa. Comparable figures a year ago were 3,109 in the U.S. and 729 in South Africa.

- The cost of incarcerating the 1.1 million Americans behind bars is $20.3 billion a year. The cost of incarcerating the half-million African-American males is $8.9 billion a year.

- In 1991, the Conservative British government and the apartheid government of South Africa developed policies committed to reducing their respective prison populations, in contrast to continued efforts of the federal government in the U.S. to promote harsher sentencing and increased prison populations.

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[1] All data in this report are for 1990, except where otherwise noted.

[2] Recent information indicates that because of political considerations, the rate of incarceration for South Africa may now be declining much more rapidly than it did in 1990. Recent correspondence documents that the prison population has dropped from 107,189 in 1990 to 87,753 in July 1991 (excluding the four "independent" homelands), which would yield a rate of incarceration of 251 per 100,000. Source: Dr. Judith van Heerden, University of Cape Town, correspondence with the author, September 5, 1991.

The new record inmate population of 1.1 million in the United States represents the latest peak of a tripling of prison and jail populations since 1973, for which there appears to be no end in sight. Federal and state corrections officials estimate that prison populations will increase 30 percent by 1995.[3]

Recent reports have also provided information on the prison populations in key nations -- India and China -- for which we previously did not have data. Human Rights Watch estimates that India has an incarceration rate of approximately 34 per 100,000[4] while Chinese officials have stated that their prison population is now 1.26 million.[5] If accurate, this would yield an incarceration rate of 111 per 100,000. Thus, both nations appear to be well within the general levels of incarceration for most of Europe and Asia.

As noted in our original "Americans Behind Bars" report, one needs to be cautious in making international comparisons of rates of incarceration. A variety of factors may affect the degree to which a nation uses imprisonment -- crime rates, criminal justice and social policies, and the use of mental institutions, among others. Nevertheless, because the rate of incarceration for the United States is so far above that of other nations, it is important to make these comparisons and to examine the policy questions which they raise.

It is also important to note that the degree to which a nation uses incarceration tells us little about the prison conditions in a country. Although India apparently maintains one of the world's lowest rates of incarceration, Human Rights Watch describes a situation in that nation of "extensive police lawlessness" and prisons which maintain a "rigid class system."[6]

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[3] "DOCs project future prison populations," Corrections Compendium, November 1991.

[4] "Prison Conditions in India," Human Rights Watch, April 1991.

[5] Lena H. Sun, "China Signals Change in Human Rights Approach," Washington Post, July 9, 1991.

[6] "Prison Conditions in India," pp. 1-2.

TABLE 1

Incarceration In Two Nations

Nation	1989	1990	% Change
UNITED STATES			
Inmate Population	1,057,875	1,139,803	+7.7%
Rate per 100,000 Population	426	455	+6.8%
SOUTH AFRICA			
Inmate Population	119,862	116,035	-2.6%
Rate per 100,000 Population	333	311	-6.6%

TABLE 2

Incarceration Of Black Males In Two Nations

Nation	1989	1990	% Change
UNITED STATES			
Black Male Inmate Population	454,724	499,871	+9.9%
Rate per 100,000 Population	3,109	3,370	+8.4%
SOUTH AFRICA			
Black Male Inmate Population	109,739	107,202	-2.3%
Rate per 100,000 Population	729	681	-6.6%

TABLE 3

INCARCERATION RATES FOR SELECTED NATIONS

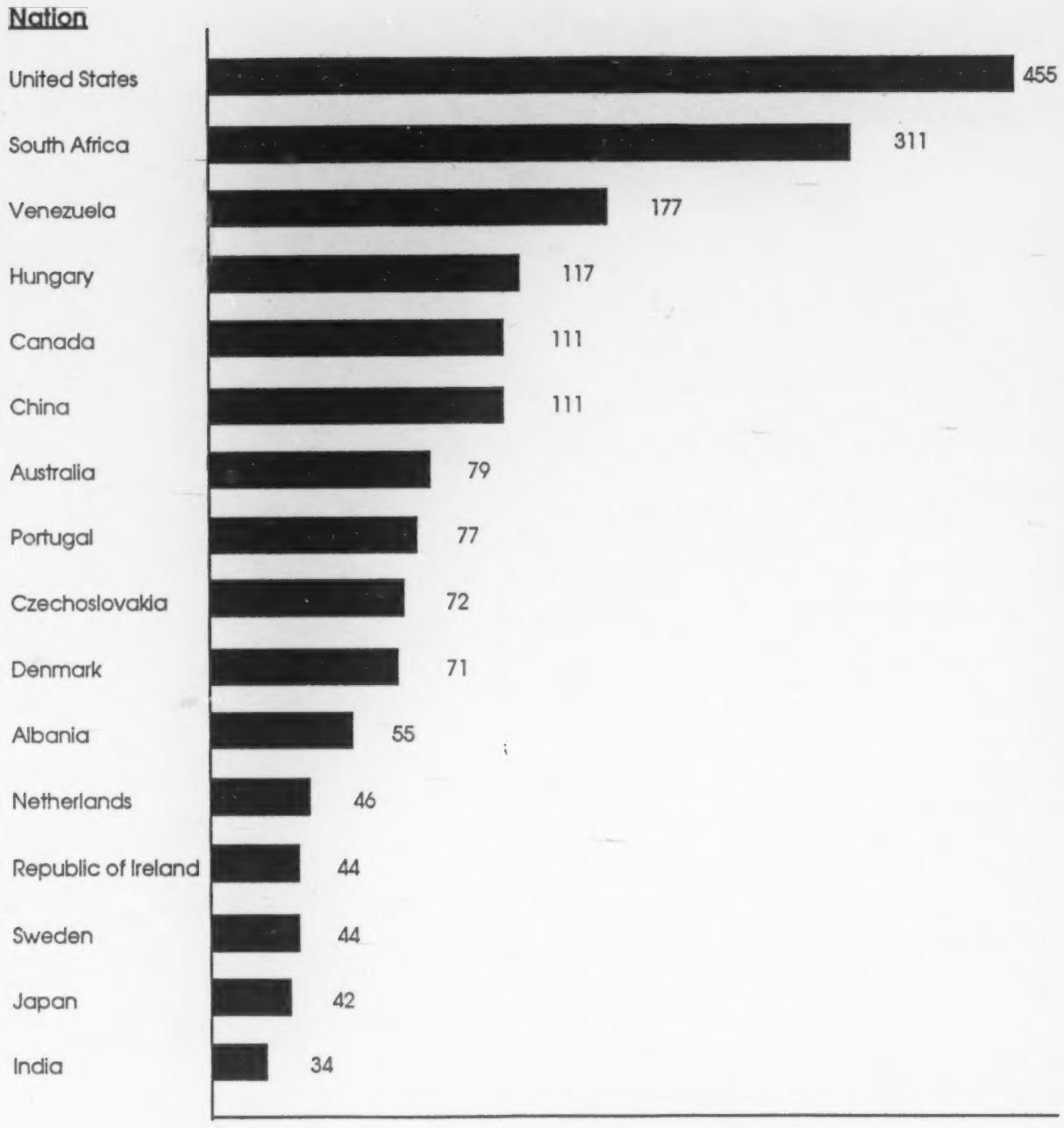

TABLE 4

INCARCERATION RATES FOR SELECTED NATIONS

1989		1990/1991	
NATION	RATE OF INCARCERATION PER 100,000 POPULATION	NATION	RATE OF INCARCERATION PER 100,000 POPULATION
United States	426	United States	455
South Africa	333	South Africa	311
Soviet Union	268	Venezuela	177
Hungary	196	Hungary	117
Malaysia	126	Canada	111
Northern Ireland	120	China	111
Hong Kong	118	Australia	79
Poland	106	Portugal	77
New Zealand	100	Czechoslovakia	72
United Kingdom	97	Denmark	71
Turkey	96	Albania	55
Portugal	83	Netherlands	46
France	81	Republic of Ireland	44
Austria	77	Sweden	44
Spain	76	Japan	42
Switzerland	73	India	34
Australia	72		
Denmark	68		
Italy	60		
Japan	45		
Netherlands	40		
Philippines	22		

(**Note:** 1989 data taken from "Americans Behind Bars: A Comparison of International Rates of Incarceration." Incarceration rates for 1990/91 are for either 1990 or 1991, depending on the availability of data for each nation.)

THE RELENTLESS RISE IN INCARCERATION IN THE U.S.: ARE WE ANY SAFER?

The use of incarceration, and particularly its dramatically increased use in the past decade, is generally justified as a response to crime. Locking up more offenders is claimed to have an impact on crime either through incapacitation -- preventing prisoners from committing crimes while they are incarcerated, or through deterrence -- raising the "cost" of crime enough so that potential offenders refrain from committing crime. Attorney General William Barr states a simple cause and effect relationship between incarceration and crime: "The choice is clear. More prison space or more crime."[7]

Proponents of the increased use of incarceration have contended that the rise in incarceration in the 1980s was responsible for a drop in crime, and that therefore, the policy was an effective one. Opponents charge that despite the rise in incarceration, crime has not declined substantially. The disagreement reflects differences in interpretation of crime statistics and about whether there is a cause and effect relationship between incarceration and crime rates.

Measuring crime rates is a much more complex issue than one would think at first, leading to conflicting reports about whether or not crime is increasing. For the general public, the "crime rate" is usually presented as the FBI's Uniform Crime Reports (UCR), a measure of serious crimes reported to the police. An alternative measure, the National Crime Survey (NCS) conducted by the Justice Department, is a sample of victims' reports, whether or not the crimes have been reported to the police. Both methods have their strengths and weaknesses, and an overall view of crime rates needs to take into account both surveys. Because so many crimes are never reported to the police, the NCS data generally provide a closer estimate of the actual number of crimes, but they do not count some types of crime included in the UCR and are weighted toward less serious crimes.

In calculating crime rates, one key variable which has a significant impact is demographics, the relative proportions of different age groups in the population. Criminologists Darrell Steffensmeier and Miles D. Harer have analyzed the reported drop in crime in the 1980s by taking into account the changing age mix of the U.S. population.[8] Their analysis begins with the fact that the most "crime prone" age group is that of 15-24 year olds, with the peak years being 16-18. Steffensmeier and Harer point out that the "most significant shift during the 1980s has been the decrease in the population of those aged 15 to 24." Therefore, one would expect some drop in the crime rate solely due to this factor, all other things being equal.

In fact, when the authors examined changes in the two measures of crime, this is exactly what they found:

- Demographic changes explained the entire decline of the reported UCR crime rate, and 55 percent of the decline in the NCS measure.

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[7] Remarks to the California District Attorneys Association, January 14, 1992.

[8] Darrell Steffensmeier and Miles D. Harer, "Did Crime Rise or Fall During the Reagan Presidency? The Effects of an 'Aging' U.S. Population on the Nation's Crime Rate," Journal of Research in Crime and Delinquency, Vol. 28, No. 3, August 1991.

- Instead of a reported drop in the UCR crime rate of 4 percent from 1980-88, the age-adjusted statistics yielded an increase of 7 percent.

- For the NCS measure of crime, a 17 percent reported decline in that period is reduced to 7 percent by accounting for demographics.

Between 1980 and 1988, the combined federal and state prison populations increased by 90 percent. Despite this massive increase, the two leading crime indicators show merely a slight increase in crime by one measure and a slight decrease by another. Clearly, there have been no dramatic gains in crime control as a result of these policies. Steffensmeier and Harer conclude that the "criminal justice system does not contain the solution to the nation's crime problem."

STILL "TOUGH ON CRIME"

"Americans Behind Bars" described the combination of crime rates and criminal justice policies which had contributed to the world record rate of incarceration in the United States. Among the factors cited to explain this were the high rate of assaultive crime, the rise of the "get tough" movement, the "war on drugs," and the broad nature of social problems contributing to the commission of crime. Since the release of "Americans Behind Bars," additional research has documented the impact of these factors during the 1980s.

The "War on Drugs"

At all institutional levels, the number of drug offenders behind bars has increased dramatically during the past decade:

- Federal Prisons - In the federal prison system, the number of drug offenders has more than doubled since 1981, now totaling 53 percent of the inmate population. This figure is expected to grow to 69 percent by 1995.[9] Figure 1 shows the dramatic rise in drug offenders in federal prisons.

- Jails - In local jails, the proportion of inmates charged with drug offenses increased from 9 percent to 23 percent from 1983 to 1989, with drug offenders accounting for 40 percent of the increase in the jail population during this period.[10]

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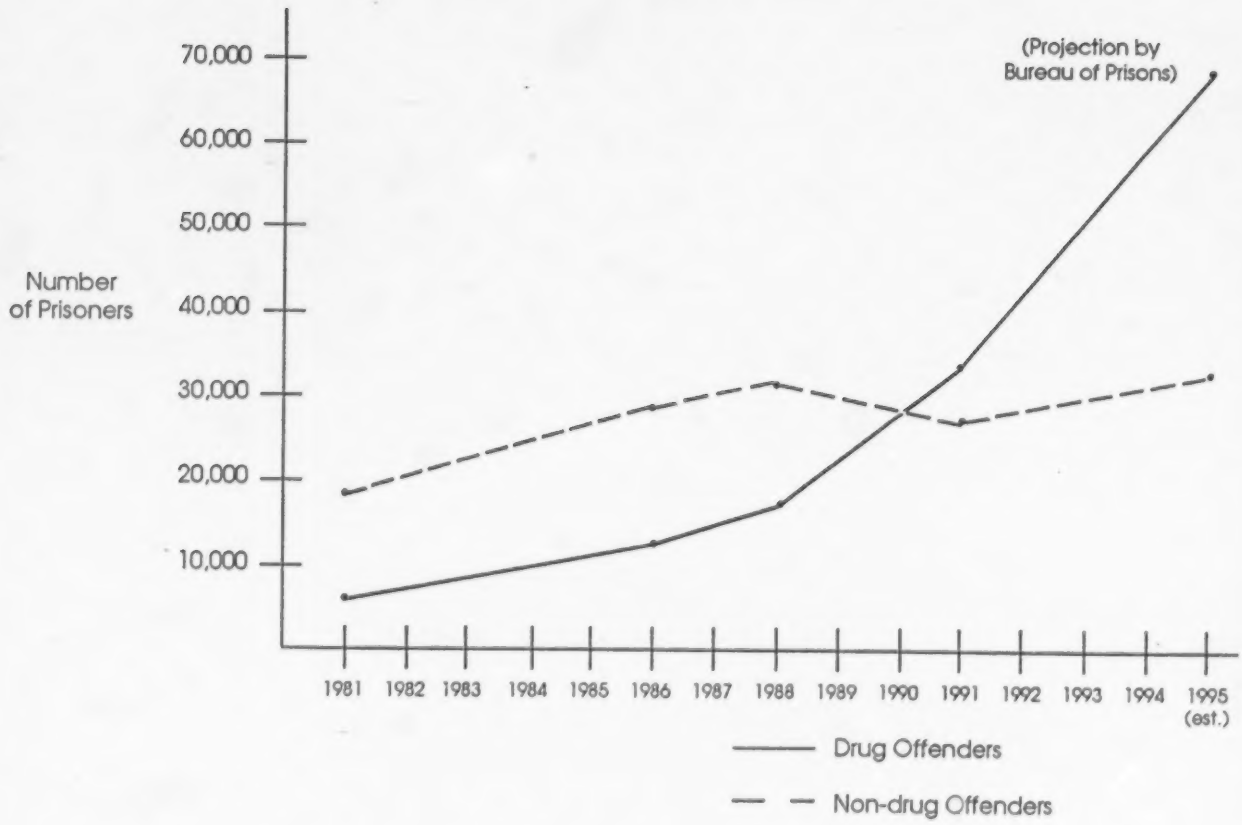
[9] Michael Isikoff, "Number of Imprisoned Drug Offenders Up Sharply," Washington Post, April 25, 1991.

[10] "National Update," Bureau of Justice Statistics, July 1991.

FIGURE 1

GROWTH OF FEDERAL PRISON POPULATION
DRUG AND NON-DRUG OFFENDERS



(**Note**: Drug offenders include only those convicted of a drug offense but not offenders convicted of a non-drug offense who have a drug history.)

- State Prisons - Although the most recent available data on state inmate populations are for 1986, when drug offenders made up 8.6 percent of inmates[11], all indications are that that proportion has risen considerably in the past several years. In Florida, for example, prison admissions for drug crimes climbed 1,825 percent from 1980 to 1989, compared to an increase of 381 percent for all crimes in that period.[12] By 1988, over a third of all state felony convictions were for drug offenses.[13]

Proponents of the "war on drugs" contend that such massive increases in arrest, prosecution and incarceration should lead to reduced drug use. Yet, the 1991 household survey of the National Institute on Drug Abuse reports an 18 percent increase in the number of people using cocaine at least once a month, and a 29 percent increase in the number of weekly cocaine users.[14] Although overall drug use and drug use among young people declined somewhat, the survey also showed an increase in drug use among blacks and the persistence of substantial inner-city drug use. Thus we see little change in drug use among the population which has been most heavily subjected to criminal justice sanctions.

Many observers believe that a strategy designed to reduce drug use and drug crime should provide comprehensive treatment of drug offenders while incarcerated. Although the National Drug Control Strategy and other policies endorse this approach, the reality of life in prison is vastly different. The General Accounting Office has recently reported that only about 20 percent of the more than 500,000 state prison inmates in need of drug treatment actually receive any treatment, and that only 364 of an estimated 27,000 federal inmates with moderate or severe drug problems were enrolled in intensive treatment.[15]

Thus, we are in the midst of a vicious cycle. Serious problems of substance abuse exist, to which the response is largely to "get tough." This results in tremendous strains for law enforcement, courts, and corrections systems, impeding their ability to respond to other concerns. Additional tens of thousands of drug offenders are incarcerated, most of whom will receive no treatment for their problems. They are then released to the community, generally with even fewer prospects for leading a law-abiding lifestyle than before their incarceration. Given this series of events, it should hardly be surprising that the "war on drugs" has few victories to proclaim.

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[11] "Drugs and Crime Facts 1990," Bureau of Justice Statistics, August 1991.

[12] James Austin, "Escalating the Use of Imprisonment: The Case Study of Florida," National Council on Crime and Delinquency, June 1991.

[13] Ibid.

[14] "National Household Survey on Drug Abuse: Population Estimates 1991," National Institute on Drug Abuse, 1991.

[15] "Drug Treatment: State Prisons Face Challenges in Providing Services," and "Drug Treatment: Despite New Strategy, Few Federal Inmates Receive Treatment," General Accounting Office, September, 1991.

Mandatory Sentencing

A recent study by the United States Sentencing Commission, conducted at the request of Congress, documents the impact of mandatory sentencing in the federal court system.[16] The study examined the 60 federal mandatory sentencing statutes established since 1984, finding that four of these statutes were responsible for 94 percent of the mandatory sentences imposed. Over 91 percent of these convictions were for drug offenses. Of those convicted, 63 percent were black or Hispanic, and one-third of the total had no prior criminal record.

The Sentencing Commission concluded that mandatory sentencing was responsible for a rise in the federal prison population of between 4,412 and 6,971 additional prison years, above what would have been expected otherwise. The estimated increased cost of incarceration ranged from $79 to $125 million.

Harsher sentencing laws have been enacted in many states as well. In 1991, the Supreme Court upheld a Michigan law requiring life without parole for possession of more than 650 grams of narcotics. The case involved Ronald Harmelin, a 45-year old Air Force veteran with no prior criminal record. Harmelin was arrested with 672 grams of cocaine, 22 grams over the minimum called for in the statute. The penalty of life without parole for this offense is the same as for first-degree murder in Michigan.

The arbitrary nature of these types of laws can be seen by comparing penalties in other states. Had Harmelin committed his offense in neighboring Ohio, he would have received a minimum sentence of 2-5 years in prison, and a maximum of 15 years.

The Failure of Alternatives to Incarceration

Although jail and prison populations have risen dramatically for almost two decades, we should not overlook the growing interest and attention to the development of alternatives to incarceration. In the past twenty years, a broad range of such alternatives have been developed -- by probation departments, corrections systems, reform groups, and others.

In some respects, the growth of alternatives has been remarkable. Virtually every state now has some type of community service sentencing program. Home confinement with electronic monitoring, starting in the mid-1980s, has grown from use with a daily average of 95 offenders in a handful of states in 1986 to over 12,000 offenders in all 50 states by 1990.[17] Similar increases can be documented for community corrections programs, victim-offender reconciliation programs, and others.

Why, then, has the inmate population expanded at an ever-increasing rate, even in the midst of this range of "alternatives to incarceration?" Three reasons are paramount.

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[16] "Mandatory Minimum Penalties in the Federal Criminal Justice System," United States Sentencing Commission, August 1991. All data on federal sentencing in this section taken from this report.

[17] Marc Renzema and David Skelton, "The Scope of Electronic Monitoring Today," Journal of Offender Monitoring, Fall 1991.

First, far too many "alternatives" or "intermediate sanctions" are in fact designed to supplement probation, and not to serve as alternatives to incarceration. Current federal policy encourages this result. As Deputy Assistant Attorney General Clifford White III stated in testifying before Congress in 1990:

> The Administration's support for these efforts [intermediate sanctions], however, is predicated, in part, upon the assumption that such sanctions should be used as an alternative to non-incarceration for offenders .... Intermediate sanctions are not a primary means to relieve prison crowding."[18]

Second, as the General Accounting Office has concluded, the number of offenders served by such programs has been relatively modest:

> It is clear that existing [intermediate sanctions] programs have had little effect and are unlikely to have a sizable one on prison populations. This is because most programs have served a relatively small population of offenders....Even in the few states with large programs, other factors have worked to cancel out program effects."[19]

Last, the inability of alternatives to stem the prison flow is a consequence of the expanded role of law enforcement generally. During the 1980s, police nationally increased the number of arrests by 31 percent.[20] Much of this was due to the heightened attention given to the "war on drugs," with drug arrests increasing from 471,165 in 1980 to 1,247,763 in 1989 and consequently, resulting in more offenders sentenced to incarceration.[21] Thus, alternatives may be having some impact on jail and prison populations, but they are unable to keep up with the ever-increasing flow into the system.

CRIMINAL JUSTICE POLICIES AND RACIAL DISPARITY

As we have seen, the rise in U.S. incarceration rates has also exacerbated the existing high rate of incarceration of African-American males. While many of the roots of this problem lie in factors outside the criminal justice system, current evidence suggests that criminal justice practices and policies contribute to the disparities documented.

The Sentencing Commission's report on federal mandatory sentencing has found racial disparity in the means by which these statutes were implemented. In one-third of the cases in which the circumstances of the case appeared to call for a mandatory minimum, prosecutors agreed to plea bargain below the minimum. The Commission reported that the "disparate application of mandatory minimum sentences in cases in which available data

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[18] Statement of Clifford J. White III before the Subcommittee on Crime, Committee on the Judiciary, March 21, 1990.

[19] "Intermediate Sanctions: Their Impacts on Prison Crowding, Costs and Recidivism Are Still Unclear," General Accounting Office, September 1990.

[20] "Uniform Crime Reports 1990," Federal Bureau of Investigation, August 1991.

[21] "Drugs and Crime Facts 1990," Bureau of Justice Statistics, August 1991.

strongly suggest that a mandatory minimum is applicable appears to be related to the race of the defendant."

A comprehensive study of plea bargaining practices in California documents similar patterns. An analysis of almost 700,000 criminal cases conducted by the San Jose Mercury News found that "At virtually every stage of pretrial negotiation, whites are more successful than non-whites."[22] For example, of 71,000 adults with no prior record who were arrested on felony charges, a third of whites had charges reduced to misdemeanors or infractions in 1989 and 1990, while only a quarter of blacks and Hispanics were able to do so.

Finally, a recent decision by the Minnesota Supreme Court declared unconstitutional state statutes which called for a sentence of four years in prison for a first-time conviction for possession of "crack," and probation for possession of cocaine powder. In finding that 96.6 percent of all persons charged with crack possession were African-Americans and 79.6 percent of those charged with possession of cocaine powder were white, the court concluded that the "correlation between race and the use of cocaine base or powder and the gross disparity in resulting punishment cries out for closer scrutiny of the challenged laws."[23]

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[22] Christopher Schmitt, "Plea bargaining favors whites as blacks, Hispanics pay price," San Jose Mercury News, December 8, 1991.

[23] State v. Russell, __ NW2d __ Slip op. at 3 n. 2 (Cases Nos. C3-91-22, and C7-91-203, decided 13 December 1991).

RECOMMENDATIONS: A NEW DIRECTION FOR CRIME CONTROL

In "Americans Behind Bars," we presented a comprehensive nine-point strategy for reducing America's rate of incarceration and providing more effective crime control. That strategy included:

1. Establish a national commission to examine the high rate of incarceration of Americans, and African-American males in particular.

2. General Accounting Office study of the social and economic factors related to crime.

3. Justice Department funding of pilot programs to reduce the high rate of incarceration of African-American males.

4. Redirect the "war on drugs" to define drug abuse as a public health problem and not a criminal justice problem.

5. Redirect the focus of law enforcement to address community needs and to prevent crime.

6. Reduce the recidivism rate of prisoners by providing effective services.

7. Repeal mandatory sentencing laws.

8. Expand the use of alternatives to incarceration.

9. Engage in a national dialogue on issues of crime and punishment.

Unfortunately, few significant policy changes have taken place in the past year. As we have seen in the recent crime debate in Congress, most legislators appear to be more concerned with sounding "tough" than responding to crime.

If the United States is ever to reverse the trends toward increasing incarceration documented in this report, more effectively curb crime than it does now, and save the next generation of young African American males, the federal and state governments must make bold, fundamental shifts in their approaches to the issues of crime and punishment. The fundamental shifts that are required include the following:

1. Federal and state governments should adopt policies with commitments to reducing the prison population.

In order to yield its position as the world leader in rate of incarceration, the United States must now commit itself to reducing its reliance upon jails and prisons as a principal tool in reducing crime. Prison and jail populations are in large part a result of policy decisions, as we have seen in the adoption of mandatory sentencing laws and the heightened attention directed to the "war on drugs." Political leaders of both parties have pursued this agenda, fearing that to do otherwise would risk losing public support. In recent months, though, two nations hardly noted for their liberal social policies have done exactly this.

The British government, in adopting the 1991 Criminal Justice Act, includes as one of its objectives, "a significant reduction in the number of offenders in custody."[24] The Act represents the culmination of policies and positions developed for the Conservative governments of Margaret Thatcher and John Major, and is based on the premise that prisons are too costly and not effective enough in reducing crime. Its provisions call for changes in sentencing that would result in greater use of community-based punishments, with the possibility that the prison population could be reduced by 35-50 percent by 1995 if the Act's provisions are effectively implemented.

Perhaps even more striking is the Republic of South Africa's intention to also reduce its prison population. In a May 1991, White Paper, the Department of Correctional Services concluded that "Bearing economic realities in mind the increasing demand [for prison space for the next ten years] does not appear to be viable or affordable," and that "Rehabilitation can best be achieved within the community where the prisoner is to lead his life in the future."[25]

The Department then adopted as its policy:

a) The reduction/restriction of the number of unsentenced prisoners who are in prison during the period of investigation [by the Department].

b) The reduction of the number of sentenced prisoners by the introduction of a system of correctional supervision.

In the U.S. meanwhile, Administration policies contend that "a crucial element in strengthening the deterrent power of the criminal justice system is maintaining an adequate prison capacity. The Federal Government has already undertaken an effort to double the number of beds in Federal correctional institutions.... Our efforts are directed at making sure judges are not to sentence offenders to probation simply because prison space is lacking."[26]

It is remarkable to contrast the official statements of one of the most conservative governments in Europe and the apartheid regime of South Africa with current U.S. policies and practices. Policy statements alone will not result in changes in the criminal justice system, but it is difficult to imagine that significant changes will occur in the absence of such a national commitment.

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[24] Philip T. Bean, "Britain to Reduce Prison Population by 35-50 Percent," Overcrowded Times, November 1991.

[25] All citations in this section from "White Paper on the Extension of the Mission of the Department of Correctional Services and the Implementation of Correctional Supervision as an Alternative Sentencing Option," Departments of Justice and Correctional Services, 6 May 1991.

[26] Charles B. DeWitt, Director, National Institute of Justice, "Information Sharing: A Plus for Corrections Construction," in National Institute of Justice Reports, January/February, 1991.

2. Refocus our national debate on crime control to compare the benefits of increased incarceration with enhanced employment policies and educational programs.

Political leaders have argued for many years about the most effective approaches for reducing crime. One side has contended that attacking the "root causes" of crime is the most effective response, while the other believes that "tougher" sentencing will yield better results.

While proponents of increased incarceration have succeeded in implementing policies that make the United States the world leader in incarceration with no appreciable gains in crime control, those who favor attacking root causes have generally failed to make the case that traditional social welfare programs and policies can reduce crime, despite evidence that these policies often result in increased public safety.

Comprehensive research on the Head Start program, for example, has documented that every $1.00 invested in early prevention and intervention resulted in savings of $4.75 in remedial education, welfare, and crime.[27] Similar results have been found in Job Corps programs, public housing crime prevention programs, and other community-based efforts.

The recent Congressional debate on the crime bill in large part involved the two parties debating such issues as whether the federal death penalty should be enacted for 46 or 51 new crimes. This type of "debate" and legislation does little to address people's concerns about whether their homes will be broken into, whether their children will be tempted by drugs, or whether they will be mugged on the street. The public would benefit much more from a debate contrasting anticipated benefits of various policies -- prison construction vs. Head Start, mandatory sentencing vs. national health care, etc.

We know, for example, that the peak years for commission of property crimes are 16-18. Therefore, it seems plausible to consider that efforts focused on school dropout prevention or school mentoring programs might have more impact on crime than increasing juvenile penalties. Talking about crime control in these terms could steer dialogue away from the "sound bites" of campaign rhetoric and into the realm of serious discussion about one of the country's most pressing problems.

While such rational discussion of crime policies may sound foreign to the crime control debates of the past twenty years, this type of discussion is exactly how policymakers and professionals address problems in other areas. In health care, for example, our primary response to a major health problem, such as heart disease, cancer, or AIDS, is not to build more hospitals to treat sick people. Instead, there is widespread acknowledgement that prevention of these diseases is society's most cost-effective and humane approach. Education and prevention efforts in health care are not considered "soft on disease"; neither should these types of policies be considered "soft on crime" in the area of crime control policy.

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[27] "Youth Investment and Community Reconstruction: Street Lessons on Drugs and Crime for the Nineties," The Milton S. Eisenhower Foundation, 1990.

3. Re-examine sentencing policies and practices, with a goal of reducing the use of incarceration.

As we have seen, the advent of mandatory sentencing has often led to increased disparities and injustices in sentencing. Federal judges are almost unanimous in their criticism of these laws, as are many other criminal justice professionals.

Many sentencing laws and release practices ignore objective data and rational choices, contributing greatly to prison overcrowding. A recent study in Alabama, for example, found that inmates in that state were released from prison after 29.2 months on average, compared to 20.7 months for other states.[28] The study further found that Alabama prisoners on the whole were no more serious offenders than in other states. Therefore, if Alabama prisoners served as much time on average as in other states, the state prison population would be reduced by 44 percent. It is thus no surprise to note that Alabama currently ranks sixth in the nation in its rate of incarceration.

Although the experience of the federal government and states with sentencing guidelines is quite mixed, at best, guideline models exist which can have an impact on prison populations. Minnesota's sentencing guidelines, for example, were developed with a specific mandate that the cumulative prison sentences imposed in the state not exceed the capacity of the prison system. Few other jurisdictions have chosen to incorporate this objective into their sentencing structures.

We would not expect that all fifty states would, or should, adopt the same types of penalties for crimes. We should expect, though, that when legislators establish criminal penalties, that they do so taking into consideration objective data and exploring the range of options available. This should include the crime control benefits of various forms and lengths of incarceration, recidivism rates for various lengths of prison terms, and the racial impact of various sentencing policies. Court systems also need an expanded range of sentencing options from which to choose appropriate sanctions.

4. Develop more effective alternatives to incarceration.

Although alternatives to incarceration have had only mixed success in accomplishing their objectives, the benefits of successful programs demonstrate the potential for non-incarcerative forms of punishment.

One of the most critical failings of many alternative programs has been the inability to "target" an appropriate group of offenders; that is, offenders who would otherwise be sentenced to prison or jail. A number of researchers, though, have demonstrated that these problems can be overcome. In North Carolina, for example, the state's Community Penalties Programs employ a sophisticated statistical measure of the likelihood of an offender being sentenced to incarceration. They can therefore be fairly confident that offenders sentenced to non-prison terms most likely would have been incarcerated in the absence of the program. Successful programs lacking access to such data have developed their own internal means of "targeting" an appropriate group of offenders. Such techniques

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[28] Kay Monaco, "Alabama Coordinator's Report," Overcrowded Times, November 1991.

need to be employed more widely if alternatives are to have a significant impact on the prison population.

As noted previously, too often alternatives have been unsuccessful either because they lack clear goals or have not received sufficient funding to accomplish their objectives. If alternatives to incarceration are to have a sustained impact on prison and jail populations, there needs to be a commitment from policymakers and criminal justice practitioners to expand their scope as much as possible. This includes as well a broad challenge to the rationale for incarceration, both in individual cases and on a systemic basis. Not all offenders are appropriate candidates for alternatives, but successful programs have demonstrated that their potential is much broader than many would think at first.

CONCLUSION

A year ago, "Americans Behind Bars" documented the dramatically high rate of incarceration in the United States. There are now more Americans behind more bars, with new records being established each day. The overall picture is very distressing.

Reasons for optimism do exist, however. Increasing numbers of criminal justice practitioners are speaking out regarding the limited ability of the criminal justice system to control crime. Local and state officials are becoming more cognizant of the fact that they "can't build their way out of" prison and jail overcrowding problems. And, public support for programs such as drug treatment as a means of responding to social problems remains high.

Yet, despite these encouraging signs, the overall political debate regarding crime policies remains very narrow and restricted. As an election year begins, the images created by the "Willie Hortonization" of the 1988 campaign are still fresh in the public's mind. Political leaders have the opportunity to engage in a more rational and productive discussion on how to control crime. We can only hope they will take advantage of this.

METHODOLOGY

Population Data

United States - Census Bureau estimate for July 1, 1990.

South Africa - Estimates of the Institute of Race Relations for 1989 and 1990.

Other Nations - Estimates of 1990 populations from World Almanac 1991.

Prisoner Data

United States - The total number of inmates was obtained by adding the number of prison inmates on December 31, 1990 and the number of jail inmates on June 29, 1990, both derived from reports of the Bureau of Justice Statistics. From this figure, we excluded 2,301 juveniles being held in local jails as well as 34,459 inmates (2.93 percent of the total) under state and federal jurisdiction who were being held in local jails, in order to avoid double-counting.

To determine the number of black male inmates, we used the figure of 43 percent of the jail population ("Jail Inmates, 1990") as well as the most recent estimate of 44.3 percent of the state and federal prison population (Correctional Populations in the United States, 1989). From this total also, we have deducted the number of juveniles as well as the 2.93 percent overlap between jail and prison inmates.

South Africa - The number of prisoners, as well as a breakdown by race and sex, is taken from the annual report of the South African Prisons Service, with data as of June 1990. The South African categories of Blacks and Coloreds are combined as Black for this analysis. We have also attempted to include prison data for the four "independent" homelands of Transkei, Bophuthatswana, Ciskei and Venda. These homelands are recognized by no nation outside South Africa, and are generally agreed to be appendages of the South African government. The most recent data for prisoners in the four homelands is for 1987, showing that Bophuthatswana incarcerated 2,677 prisoners. We then calculated that this would yield an incarceration rate for the homelands of 143 per 100,000 (assuming rates of incarceration were similar for the other homelands), and estimated the homelands prison population in this manner.

Recognizing that data for the homelands are limited, we have also calculated the South African rates of incarceration excluding the four homelands. Doing this yields a 1990 rate of 347 per 100,000, and a black male rate of 789 per 100,000. Both figures are higher than those used in the report, but still well below rates in the U.S.

Tables 1 and 2 show a much sharper decline in the South African rate of incarceration than for the actual inmate population. This is primarily due to the difficulty in obtaining accurate estimates of the South African population from year to year. We have used the estimates of the Institute of Race Relations, generally considered to be the most reliable figures, but calculations of the rate of incarceration may fluctuate annually depending on the accuracy of the population data.

Other Nations - Prisoner data compiled from reports of Penal Reform International, Human Rights Watch, embassies, and news accounts. Data are either for 1990 or 1991, depending on the source used. Nations included in the report were selected on the basis of our ability to obtain data for these years. Incarceration rates are not always exact, since all national population data are for 1990. Since overall populations for most nations fluctuate less than two percent a year, the margin of error due to this discrepancy is very small.

Costs of Incarceration

Incarceration costs were estimated by using data from the Bureau of Justice Statistics report, "Justice Expenditure and Employment, 1988." We first developed an average cost per inmate for federal, state and local institutions, and then used these figures to calculate costs for the 1990 institutional populations. Since inflation was not factored into these calculations, the total estimated costs probably understate the actual costs.

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